

RESOLUTION NO. 2015-102

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES REGARDING THE APPEAL FROM THE PLANNING COMMISSION'S DETERMINATION PERTAINING TO THE REVIEW OF THE OPERATION OF GREEN HILLS MEMORIAL PARK, UPHOLDING IN PART AND MODIFYING IN PART THE PLANNING COMMISSION'S DECISION APPROVING THE COMPLIANCE REVIEW FOR THE GREEN HILLS CEMETERY AND ALLOWING THE MAUSOLEUM BUILDING IN AREA 11 TO CONTINUE IN ACCORDANCE WITH ITS 2007 APPROVALS AND PERMITS AND REVISING CERTAIN CONDITIONS OF APPROVAL, AND AMENDING THE GREEN HILLS CEMETERY MASTER PLAN, FOR PROPERTY LOCATED AT 27501 WESTERN AVENUE (GREEN HILLS MEMORIAL PARK).

WHEREAS, on April 24, 2007, the Planning Commission adopted P.C. Resolution No. 2007-32, certifying a Mitigated Negative Declaration and adopted P.C. Resolution No. 2007-33, approving amendments to the Green Hills Master Plan, which called for development of the Green Hills Memorial Park ("Green Hills") over the next 30 to 50 years, and allowed grading and mausoleum buildings to be constructed at various specified locations throughout Green Hills cemetery; and,

WHEREAS, Condition of Approval Nos. AQ-14 and N-3 in P.C. Resolution No. 2008-47 state that: *"The project shall be reviewed by the Planning Commission annually, commencing on the date of final approval, to review the applicant's compliance with all conditions of approval associated with the Master Plan and Master Plan Revision. At that time, the Planning Commission may add, delete, or modify the conditions of approval as deemed necessary and appropriate, as well as increase the time between review periods. Notice of said review hearing shall be published and provided to owners of property within a 500' radius, to persons requesting notice, to all affected homeowners associations, and to the property owner in accordance with Rancho Palos Verdes Development Code Section 17.80.090."*, thereby affording the Planning Commission the ability to add, delete, or modify the conditions of approval as deemed necessary and appropriate; and,

WHEREAS, after review of the plans for consistency with the Green Hills Master Plan, Planning Division approval was granted on November 11, 2011, for the first phase of the Pacific Terrace/Memorial Terrace Mausoleum building in Area 11; and,

WHEREAS, on February 16, 2012, the Building and Safety Division issued a building permit for the construction of the first phase of the Memorial Terrace Mausoleum building, which is also known as the Pacific Terrace Mausoleum, in Area 11 ("Pacific Terrace/Memorial Terrace Mausoleum" or "the Mausoleum") and Green Hills commenced and completed construction of the building, and on September 11, 2013,

the Building and Safety Division finalized the building permit for the 10,366 square foot Pacific Terrace/Memorial Terrace Mausoleum building per BLD2011-00799 and thereafter commenced operations including sales of crypts and burial plots, including on the rooftop; and,

WHEREAS, as a result of the construction and operation of the new mausoleum building, Staff received numerous inquiries and complaints from residents in the adjacent *Vista Verde* condominium complex in the City of Lomita regarding the Mausoleum's visual and view impacts, in addition to the proximity of the burial preparation and ceremonial activities on the roof of the Mausoleum building; and,

WHEREAS, on February 25, 2014, the Planning Commission held a duly noticed public hearing to conduct an operational review of the Green Hills Cemetery to address the concerns about the Pacific Terrace/Memorial Terrace Mausoleum building along with any other concerns raised by the public regarding the Green Hills Master Plan, at which time all interested parties were given an opportunity to be heard and present evidence; and,

WHEREAS, at the February 25, 2014 Planning Commission meeting, the Planning Commission tentatively agreed to impose a 90-day moratorium on all ground burials and interments on the rooftop of the Pacific Terrace/Memorial Terrace Mausoleum building in Area 11 while Staff identified new or revised conditions to address specific noise, visual and privacy impacts identified by the Planning Commission based on public testimony, and continued the public hearing to the March 11, 2014; and,

WHEREAS, on March 11, 2014, the Planning Commission continued the public hearing to April 22, 2014, to allow Green Hills and the Vista Verde Condominium Association to come to an agreement on mitigation measures to address impacts associated with the Pacific Terrace/Memorial Terrace Mausoleum building in Area 11 which thereafter was further continued to May 13, 2014, and again to August 12, 2014, to allow the parties to continue their discussions and directed Staff to include a Resolution for consideration that could impose a temporary 90-day moratorium on rooftop burials on the Pacific Terrace/Memorial Terrace Mausoleum building; and,

WHEREAS, at the August 12, 2014 Planning Commission meeting, the Planning Commission conducted the continued public hearing at which time all interested parties were given an opportunity to be heard and present additional evidence, and directed Green Hills to apply for an after-the-fact Variance to seek approval to allow the existing Pacific Terrace/Memorial Terrace Mausoleum building to remain encroaching into the required 40-foot property line setback and directed Staff to review Green Hills' existing conditional use permit to make sure that they are in compliance with all of the conditions of approval, closed the public hearing and directed Staff to bring back a Resolution at the August 26, 2014 Planning Commission meeting to impose a number of conditions on the cemetery to avoid/minimize impacts to the adjoining neighbors from burial activity

on the roof of the Pacific Terrace/Memorial Terrace Mausoleum building in Area 11 of the Green Hills Master Plan; and,

WHEREAS, at the August 26, 2014, meeting due to further controversy the matter was re-noticed for October 28, 2014, and at that meeting, the Planning Commission held a duly noticed public hearing, at which time all interested parties were given an opportunity to be heard and further present evidence, and to fulfill the requirements of the Municipal Code, the Planning Commission directed Green Hills to submit a Variance application within 30-days to seek approval to: (i) allow the existing Pacific Terrace/Memorial Terrace Mausoleum building to remain encroaching 32-feet into the required 40-foot property line setback; (ii) allow certain existing below ground burials within the 16-foot setback in the northwest corner of the cemetery site between the west property line and the maintenance yard to remain and to allow six additional interments in companion plots where individuals already are interred; and (iii) allow existing structures and certain existing above-ground interments to remain within the 5-foot setback area along the western property line in the area south of the Pacific Mausoleum building; and,

WHEREAS, additionally at the October 28, 2014 Planning Commission meeting, the Planning Commission agreed to impose a moratorium on ground burials/interments and sales of burial plots on the rooftop of the Pacific Terrace/Memorial Terrace Mausoleum building located in Area 11 of the Master Plan, and imposed a moratorium on above-ground burials within the 5-foot setback area along the western property line in the area south of the Pacific Mausoleum building, which would remain in effect until final City action or further determination by the City Council is taken regarding these interments and structures in the required setbacks, and imposed a number of conditions on the cemetery to avoid/minimize impacts to the adjoining residential properties from burials and activities on the roof of the Pacific Terrace/Memorial Terrace Mausoleum building in Area 11 of the Green Hills Master Plan, and directed Staff to bring back a Resolution memorializing its decision for consideration at the November 11, 2014 Planning Commission meeting, and continued the public hearing to November 11, 2014 at which time the resolution was revised and adopted; and,

WHEREAS, on November 25, 2014, Ellen Berkowitz of Gresham Savage Nolan & Tilden filed an appeal of the Planning Commission's decision to the City Council on behalf of Green Hills Memorial Park seeking to overturn the entirety of the Planning Commission's decision and followed this letter up with additional correspondence; and,

WHEREAS, Staff mailed out notices to property owners within a 500-foot radius of the cemetery property, and published the notice in the *Palos Verdes Peninsula News* on December 25, 2014 and on January 1, 2015, regarding the public hearing on the appeal, which was to be held on January 20, 2015, but when the hearing was opened on January 20, 2015, due to a substantial amount of information and materials that were submitted to the City Council just prior to the commencement of the public hearing, the

City Council continued the public hearing so the City Council would be able to review and consider all of the additional materials that had been submitted; and,

WHEREAS, during the course of the summer the parties conducted extensive discussions in an effort to resolve the dispute but no agreement was reached; and,

WHEREAS, on August 12, 2015, Staff re-noticed the appeal hearing by mailing out notices to property owners within a 500-foot radius of the cemetery property and publishing the notice in the *Palos Verdes Peninsula News* on August 13, 2014, regarding the public hearing, which was to be held on September 1, 2015, and was held with the Council directing staff to prepare a resolution upholding the Planning Commission action, which matter was scheduled to be heard on September 15, and was subsequently deferred to November 17, 2015.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES DOES HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:

Section 1: Recitals. Each of the recitals set forth above is true and correct and is incorporated as part of this decision.

Section 2: CEQA Findings. Pursuant to the provisions of the California Environmental Quality Act, Public Resources Code Sections 21000 et. Seq. ("CEQA"), the State's CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 et. Seq., the City's Local CEQA Guidelines, and Government Code Section 65962.5(f) (Hazardous Waste and Substances Statement), this decision by the City Council (i) imposes restrictions on the existing operations of the Memorial/Pacific Terrace Mausoleum to reduce the impacts of those operations on adjacent properties, (ii) constitutes minor alterations to existing structures or facilities involving negligible or no expansion of use; and (iii) will not have a significant effect on the environment. Therefore, this decision is not subject to CEQA pursuant to California Code of Regulations Sections 15601(b)(2), 15301, and 15061(b)(3).

Section 3: Municipal Code Findings for Granting Compliance Review and Modifications to Conditions. This is a de novo hearing where the City Council has considered the evidence before it. The City Council finds that this use dates back to 1948 and was annexed to the City in 1984 with the original Master Plan approved in 1991, and a revised Master Plan approved in 2007 and which has been updated from time to time. There is no expansion of the use beyond the Revised Master Plan, and additional mitigation measures have been imposed to minimize impacts to surrounding properties and protect community health, safety and general welfare. The changes to the conditions being proposed do not affect the validity of the findings made in P.C. Resolution 2007-33. Accordingly the Council finds:

- 1. That the site is adequate in size and shape to accommodate the proposed use and for all of the yards, setbacks, walls, fences, landscaping and other features required by this title or by conditions imposed under**

this section to integrate said use with those on adjacent land and within the neighborhood. To wit:

Green Hills Memorial Park entrance is located at 27501 Western Avenue in the northeast corner of the City, bordering the City of Lomita, the City of Rolling Hills Estates, and the City of Los Angeles. The property is approximately 121 acres in size, and is a privately owned and operated cemetery facility. Approximately 1,800 burials occur annually at the cemetery. The site is therefore of a size and shape that allows its use as a cemetery facility, including all required setbacks, landscaping and other features. The entrance is sufficient to accommodate traffic into and out of the cemetery.

The cemetery abuts residential properties to the north and south, a church complex and reservoir land to the west, and residential and undeveloped land to the east (site of the proposed Ponte Vista residential development), across Western Avenue. The use of the property is thus consistent with surrounding uses and the adjacent neighborhood as a low density noncommercial/nonindustrial property.

2. That the site for the proposed use relates to streets and highways sufficient to carry the type and quantity of traffic generated by the subject use.

Green Hills Memorial Park has been in existence at this location since 1948. Its main entrance is located on Western Avenue, a major thoroughfare that comfortably accommodates the amount of vehicular traffic to and from the cemetery. The proposed changes to the conditions will not negatively affect the traffic on Western Avenue.

The cemetery has an additional access road off Palos Verdes Drive North that leads to the cemetery's maintenance yard, which alleviates potential construction vehicle traffic congestion at the entrance on Western Avenue.

3. That, in approving the subject use at the specific location, there will be no significant adverse effects on adjacent property or the permitted use thereof.

The conditions imposed minimize impacts on neighboring properties. Conditions address, among others, parking, grading, noise, landscaping, setbacks, mitigation monitoring, Master Plan compliance reviews, dust, emissions by construction vehicles and equipment, construction, dirt storage, lighting, employee training and complaints, trash and debris, storage of equipment and supplies, temporary trailers, fences, signage and storm water mitigation. This is further described in Section 5 hereof.

4. That the proposed use is not contrary to the general plan.

Green Hills Memorial park is consistent with the General Plan's Cemetery zoning designation of the site, and with the types of land uses permitted within the Development Code's Commercial-Recreational land use designation. Further, the site will also continue to have an open space ambience due to the size of the site and the location, proximity, architectural design, color, and other improvements associated with the mausoleum buildings and the Master Plan Revision.

5. That conditions regarding any of the requirements listed in this Section, which the City Council finds to be necessary to protect the health, safety, and general welfare, have been imposed:

- a. Setbacks and buffers;
- b. Fences or walls;
- c. Lighting;
- d. Vehicular ingress and egress;
- e. Noise, vibration, odors and similar emissions;
- f. Landscaping;
- g. Maintenance of structures, grounds, or signs;
- h. Service roads or alleys; and
- i. Such other conditions as will make possible development of the City in an orderly and efficient manner and in conformity with the intent and purposes set forth in this title.

The Compliance Review, to gauge the effectiveness of the conditions of approval, led to the proposed modifications to mitigate the effects of decreased setbacks. Specifically, setbacks have been increased for any remaining portion of the Pacific Terrace Mausoleum in Area 11, to further protect the residents of the Vista Verde Condominium Complex from adverse impacts, and the setback for rooftop burials has been increased so as to ensure that burials do not occur too close to the complex.

Section 4: Compliance Review. Pursuant to Conditions of Approval Nos. AQ-14 and N-3 contained in P.C. Resolution No. 2007-33, which state that: *"The project shall be reviewed by the Planning Commission annually, commencing on the date of final approval, to review the applicant's compliance with all conditions of approval associated with the Master Plan and Master Plan Revision. At that time, the Planning Commission may add, delete, or modify the conditions of approval as deemed necessary and appropriate, as well as increase the time between review periods. Notice of said review hearing shall be published and provided to owners of property within a 500' radius, to persons requesting notice, to all affected homeowners associations, and to the property owner in accordance with Rancho Palos Verdes Development Code Section 17.80.090."*, during the annual review, the Planning Commission has the ability to add, delete, or modify the conditions of approval as deemed necessary and appropriate by

the Planning Commission. Pursuant to Chapter 17.80 of the Rancho Palos Verdes Municipal Code, the Planning Commission's decision has been appealed to the City Council. Section 17.80.080 A 2 and the aforementioned conditions allow the City Council to add, delete, or modify the conditions of approval that have been imposed by the Planning Commission. Accordingly, the conditions of approval that are approved by this Resolution, which are attached hereto as Exhibit "A" and incorporated herein by this reference, are hereby added to the Green Hills Master Plan.

Section 5: Modification of Conditions. Attached hereto as Exhibit A are conditions governing this use, both existing conditions and new and modified conditions, all incorporated herein. As set forth above, this determination includes incorporating additional conditions of approval within, and revising existing conditions of approval of, the 2007 Green Hills Master Plan, to address the visual, privacy and noise impacts associated with the rooftop burials on the Pacific Terrace/Memorial Terrace Mausoleum building (Area 11) upon the adjacent Vista Verde Condominium complex located in the City of Lomita. Major revisions to the conditions mitigate project impacts and are summarized as follows:

1. Baseline topographic survey. To assure accuracy of future grading, a baseline topographic survey will be required (Condition 1.b.(v).).
2. Administrative Substantial Compliance Review. Except for improvements consistent with the Master Plan or those subject to the Planning Commission, all improvements must be reviewed by the Director to determine if they substantially comply with the Master Plan, and the Director shall give notice to owners within 500 feet of the application. The Director may utilize Site Plan Review. Fifteen days is provided to interested persons to provide comment and the Director must give notice of any decision to the same persons who can appeal the decision to the Planning Commission, and thereafter to the City Council (Condition 1.k.).
3. Planning Commission Review. Certain matters are directly reviewable by the Planning Commission including (i) the construction or modification of a mausoleum or other significant building, (ii) any significant change to the grading, (iii) any development of a future phase of Green Hills where the Master Plan has not designated a development plan or uses, or (i) any amendment to the Master Plan. The same notice provisions for adjacent owners are required as for Director administrative review in Condition 1.k. (Condition 2).
4. Building Silhouettes. To give residents a better understanding of building impacts, the applicant is required to construct silhouettes and give notice to surrounding owners 30 days before Director approval (Condition 1.i.).
5. Annual Review. The review condition was modified so that review is required in connection with (i) a substantial compliance review, or (ii) amendment of the Master Plan, and may be submitted to the Planning Commission directly or through appeal. (Condition 5.AQ14).

6. Area 11. A number of conditions are imposed concerning screening use of equipment, landscaping, sound amplification, tenting, during rooftop services, notice to owners concerning services, providing staff supervision and a complaint contact. Certain areas are excluded for burials. Service hours are limited to 10:00 a.m. to 3:00 p.m. (Conditions 1.3 and 1.3.5).
7. Variance/Moratorium. Conditions recommended by the Planning Commission requiring the applicant to seek a variance and imposing a temporary moratorium are deleted (Conditions 1.f., 1.p., 53, 55).
8. Area 11 Setbacks. The 8-foot setback only applies on the north for the existing Mausoleum as approved, and otherwise the 40-foot setback applies. (Condition 8a).
9. Hours. Hours for construction and operation equipment, for opening buildings, for burial activity for services, are all comprehensively regulated. (Condition 17).
10. Building Heights. Building heights are limited to 20 feet from the highest finished grade or 30 feet from the lowest grade to the highest part of the building. (Condition 30).
11. Trash. Applicant is required to keep the site clean of trash and debris and keep appropriate storage areas, and maintain all landscaping. (Conditions 14, 15).
12. Employee Training. Employees must be trained as to safety requirements and other laws concerning mortuaries and also compliance with the requirements of the CUP. (Condition 12).
13. Revocation. Applicant must agree to be bound to all conditions and a revocation process is provided for noncompliance. (Condition 37).
14. Fees. Applicant must pay all fees and costs of compliance. (Condition 39).
15. Indemnification. Applicant must defend all development approvals and enter building detailed agreement. (Condition 41).
16. Mediation. Applicant must agree to appraise value of any losses to Vista Verde Homeowners and participate in mediation unless Homeowners decline. (Condition 40).

Section 6: Council Rejects Requirement For Variance. Green Hills' appeal challenges the City Council's ability to require Green Hills to obtain a Variance for the Pacific Terrace/Memorial Terrace Mausoleum. For the following reasons set forth herein, the City Council finds that the provisions of the setback conditions of the CUP take precedence over the zoning setbacks and the applicant is not required to go through a duplicative public variance process which would create the potential for inconsistent legal proceedings.

A. Zoning Ordinance Allows CUP to Supersede Zoning.

RPVMC Section 17.60.050(B) provides as follows:

“Conditional use permits may be granted for such period of time and upon such conditions and limitations as may be required to protect the health, safety and general welfare. Such conditions shall take precedence over development standards otherwise required by the underlying zoning of the subject site.”

The highlighted language gives the 8-foot setback “precedence” over the underlying 40-foot setback of the zoning. The Planning Commission was advised that this language permits variation from the underlying zoning only if it, in effect, promoted the general welfare. If the variation from the development standards was contrary to the general welfare then it could not be approved.

To grant a CUP, the following finding must be made:

“6. That conditions regarding any of the requirements listed in this paragraph, which the planning commission finds to be necessary to protect the health, safety and general welfare, have been imposed:
a. Setbacks and buffers” RPVMC § 17.60.050(A).

In fact, in 2007 in Resolution 2007-33 the Planning Commission made these findings. The Planning Commission found that conditions have been imposed to protect the health, safety and general welfare, including concerning setbacks and buffers, and the 8-foot setback was one of the approved setbacks.

Legal counsel for Green Hills has argued that discretionary authority given by the ordinance in the granting of a CUP to vary from the underlying zoning *contains no qualification that this only applies if it “promotes” general welfare.*¹ It is a general rule of statutory construction that courts “are generally bound by a statute’s plain text and are not permitted to add words to a statute to accomplish a purpose ... not apparent from the face of the statute.”² Thus, in the absence of language in the zoning code that expressly restricts the “takes precedence” to where the change is more restrictive, and not less, it would appear that there is no basis for adding this qualification to the express provisions of Section 17.60.050(B). Accordingly, the Council finds that the conditions of the CUP modified the questioned setback to 8 feet.

¹ See letter from Ellen Berkowitz dated September 1, 2015.

² *Lucent Technologies, Inc. v. State Bd. of Equalization*, 241 Cal. App. 4th 19 (2015) (internal citations omitted).

B. Green Hills has a Vested Right.

Vested rights require validly issued permits along with substantial construction in reliance on the permit. A conditional use permit (CUP) can lead to obtaining a vested right, although the nature of the rights is determined by the conditions of the permit itself and the city's ordinances. In 1991, the City Council adopted Resolution No. 91-7, which approved a master plan (the "Master Plan"), a CUP, and a grading permit for Green Hills Memorial Park, to govern the long-term development of their cemetery property. In 2007, the Master Plan, the CUP, and the grading permit were revised and updated, per P.C. Resolution No. 2007-33. This Resolution reduced the setback to 8 feet. Thereafter in February 2012, the building permit for the Mausoleum was issued with the City apparently of the belief that the issuance was proper. *While grading permits might not produce a vested right, clearly, a validly issued building permit does under California law, as discussed below.*

Besides a validly issued permit, the second prong of the vested right test is that there has been substantial construction in reliance on the permit. This rule comes from the California Supreme Court case *Avco Community Developers, Inc. v. South Coast Regional Commission*.³ In that case, a developer of a subdivision, part of which lay within the jurisdiction of the California Coastal Zone Commission, sought a writ of mandate to compel the Commission to grant an exemption from provisions of the California Coastal Zone Conservation Act of 1972 requiring issuance of a permit for any development within the Coastal Zone. The Supreme Court, held, that the developer had not obtained vested rights to proceed with the development by virtue of the fact that, prior to the effective date of a permit requirement, it had obtained approval of a planned unit development and had spent \$3,000,000 to subdivide and grade the property, and to make certain improvements on the land, such as installing utilities. The Court stated that:

"[i]t has long been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit."⁴

However, while in spending \$3,000,000 Avco had spent considerable resources to improve the property, it *had* failed to obtain the necessary building permits prior to the effective date of the Coastal Commission's requirements. Substantial expenditures in reliance on a building permit created a vested right but would not if based only on a grading permit.

³ *Id.*

⁴ *Id.* at 791.

Following *Avco*, the rule has generally been that merely spending money, or even grading the site is insufficient. Instead the developer must advance to obtaining building permits and pouring foundations. Here, Green Hills had an amended Master Plan and a CUP which, consistent one with the other, permitted them to construct the mausoleum with an 8 foot setback. Green Hills submitted structural plans in November of 2011 and building permits issued in February 2012. These in and of themselves would not have created vested rights, but in April they began construction, and on September 11, 2013, the Mausoleum was completed and finalized by the City. Thus, unlike the situation in *Avco*, here the building permits have issued, and in addition, not only the foundations but the building itself has been completed and operations have gone on for over a year; thus, the substantial reliance standard articulated in *Avco* has been satisfied.

C. Conclusion. In summary, Green Hills is not required to seek a variance because: (i) the express language in the Municipal Code states that the conditions in the CUP can supersede the zoning; (ii) the Planning Commission expressly found the CUP did not have an adverse effect on surrounding property and promoted health and safety when it granted the CUP, (iii) Green Hills obtained a vested right as described above, (iv) the equities between the developer and City do not support equitable estoppel, and (v) proceeding with a variance leaves the City conducting a pro forma hearing where a denial of the variance would subject the City to potential liabilities of millions of dollars (as described in Section 7 below).

Section 7: Due Process Rights. Additionally requiring Green Hills to obtain a variance would deprive them of due process. Case law provides that for a hearing to afford due process rights, the hearing body must have the ability to undertake the requested action.⁵ Accordingly, a variance hearing would only be appropriate if the City Council could grant the variance. Here the argument seems to be that obtaining the variance is necessary as a technicality. But the reality is that if the City were to require the variance, it must be assumed that the variance could be denied (and in fact we see some legal arguments against the validity of a variance)⁶. But if the variance were denied, it would follow that the City's position would be that the Mausoleum must be

⁵ *People v. Broad*, 216 Cal. 1, 7, 12 P.2d 941, 943 (1932) ("The rule is well settled that to constitute due process of law in regard to the taking of property the statute should give the parties interested some adequate remedy for the vindication of their rights.")

⁶ A variance is "an administrative or quasi-judicial act permitting minor deviations from existing land use regulations so that the landowner does not suffer undue hardship, but which does not violate the overall established land use regulatory scheme. Section 65906 of the Government Code limits the circumstances under which a variance is appropriate: a variance "shall be granted *only when*, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. (Emphasis added.) Nothing in the record suggests that an undue hardship exists as to Green Hills' property, including size, shape, topography, location, or surroundings. Thus there is a legitimate argument against the City Council being able to make the necessary findings to support the granting of a variance in this case. The better argument is that RPVMC Section 17.60.050(B) contains sufficient authority to grant a CUP which alters the requirement of the underlying zoning without requiring a second potentially inconsistent legal proceeding of a variance.

removed. This then would bring the City into litigation over the vested rights of the developer, Green Hills.

We are unaware of the specific costs of construction of the Mausoleum, the revenues which have resulted from the sale of burial plots, or the anticipated sales of future burial plots. Nor have we attempted to estimate claims for interference with contract rights and pain and suffering of parties related to the burials within the Mausoleum if they are disturbed (were that even legal) and the disputes which would arise were the Mausoleum removed, but collectively these claims and the legal fees to resolve the claims could easily exceed many millions of dollars. It would seem the height of folly to pursue a legal proceeding where one of the two outcomes would expose the City to such legal proceedings and potential damages. This proves the point that given the construction of the Mausoleum two years ago, such a variance proceeding was in the order of a legal fiction as the City could not realistically deny the variance in light of the developer's vested rights.

Section 8: Moratorium Has Not Come Into Effect and is not Appropriate.

A. Stay in Effect. In its decision, the Planning Commission imposed a Moratorium on further interments within the required setbacks and on the burials and sale of plots on the roof of the Pacific Terrace/Memorial Terrace Mausoleum in Area 11 during the period between the Planning Commission's decision and the City Council's determination on this appeal. Counsel for the Vista Verde Homeowners' Association, has stated that the moratorium should have been enforced during the pendency of the appeal by Green Hills. However, Section 17.80.020 states that: "The filing of a notice of appeal pursuant to this chapter stays all activity on the project until a final decision on the appeal." This provision applied to all aspects of the Planning Commission's decision being appealed. Accordingly, the filing of the appeal by counsel for Green Hills stayed the effect of the moratorium that was imposed by the Planning Commission.

B. Council Declines Imposing Moratorium. For the reasons stated above, it appears that Green Hills had vested rights to construct the Mausoleum pursuant to a building permit BLD2011-0079 issued on February 16, 2012, which has not been revoked, and that substantial expenses were incurred in good faith thereon, and the City on September 11, 2013 "finaled" the building and approved occupancy. Additionally, since that time Green Hills has continued its operations therein and sold numerous plots to patrons who have legal interests in the property and structures.

C. Preemption. Although the City can regulate land use matters concerning a cemetery, State law controls the internal operations of cemeteries, and the potential imposition of a moratorium could have an unpredictable impact on such operations and subject the City to liability. Notwithstanding these considerations, nothing in here shall be deemed to restrict the City's future land use authority over Green Hills development or the Master Plan.

Section 9: Revocation. It was contended on behalf of the Vista Verde HOA, and residents of Vista Verde contend, that the conditional use permit for the Pacific Terrace/Memorial Terrace Mausoleum should be revoked. However, the revocation process would need to occur at a duly noticed public hearing specifically pertaining to the revocation process. (See, Municipal Code Section 17.86.060.) Furthermore, the Municipal Code allows property owners to file applications that will bring properties into compliance with the Municipal Code (See Municipal Code Section 17.86.050), which would be the objective of the Variance application. For these reasons, this hearing, which is an appeal by Green Hills from the Planning Commission's decision on the operation of Green Hills and Green Hills' compliance with the conditions of approval, is not the appropriate venue for consideration of the issues raised by the HOA and the Vista Verde residents, who did not file an appeal from the Planning Commission's decision.

Section 10: Mediation and Indemnity. The City Council endorses a mediation process as a useful approach to the problem. The Council directs the City Attorney to pursue the following:

1. Indemnity: The City Attorney would add the conditions to this and future land use approvals that the applicant bear the expense of defending the validity of the actions. A condition would be added to the CUP and a detailed indemnity agreement would be negotiated between the parties.
2. Appraisal: The parties should consider obtaining an appraisal to determine the diminution in value of the Vista Verde units, if any. If the parties cannot agree on the appraiser, then Green Hills and Vista Verde would each select for and pay for an appraiser. The value of the loss would be fixed at the average of the two highest appraisals, with the old appraisal also considered. Green Hills would be liable for 100% of the appraised loss. The details of this process could be negotiated when and if Vista Verde chooses to proceed with mediation.
3. Mediation: With completion of the appraisal, the parties would participate in a mediation. In addition to Green Hills' participation, City would participate and would contribute up to \$200,000 to any mediated agreement, being the estimate of what the City would save on legal fees if litigation is avoided.
4. Mitigation: The conditions primarily contemplated to minimize impacts shall be added to the CUP.
5. Principles: Vista Verde Homeowners and HOA should be encouraged to participate but are not required. Green Hills by the conditions would be required to participate, unless the Vista Verde Homeowners decline. The above requirements can be modified by mutual agreement of the parties.

Section 11: Approval of Compliance Review and Modifications to Conditions.

For the foregoing reasons and based on the information and findings included in the Staff Reports, Minutes and other records of proceedings in this matter, and pursuant to Condition of Approval Nos. AQ-14 and N-3 contained in P.C. Resolution No. 2007-33 that grant the Planning Commission (and the City Council on appeal) the ability to *add, delete, or modify the conditions of approval as deemed necessary and appropriate*, the City Council of the City of Rancho Palos Verdes hereby amends the decision of the Planning Commission and adds to the 2007 Green Hills Cemetery Master Plan, the conditions that are set forth within the attached Exhibit "A," which is incorporated herein by this reference.

Section 12: Judicial Review. The time within which judicial review of the decision reflected in this Resolution must be sought is governed by Section 1094.6 of the California Code of Civil Procedure or other applicable short periods of limitation.

PASSED, APPROVED AND ADOPTED this 17th day of November 2015.


/s/ Jim Knight
Mayor

Attest:

/s/ Carla Morreale
City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)ss
CITY OF RANCHO PALOS VERDES)

I, Carla Morreale, City Clerk of the City of Rancho Palos Verdes, hereby certify that the above Resolution No. 2015-102 was duly and regularly passed and adopted by the said City Council at a regular meeting held on November 17, 2015.



City Clerk

EXHIBIT 'A'
CONDITIONS OF APPROVAL FOR
27501 Western Avenue (Green Hills Cemetery Master Plan)

1. **General; Consistency Master Plan.** This approval is a Revision to the Green Hills Master Plan, and shall be consistent with the "Master Plan Amendment Submittal Package" booklet dated January 29, 2007, prepared by J. Stuart Todd Inc. Specifically, Revision "D" allows the following:
 - a. **Grading 1991-2004.** Acknowledgment that the actual quantity of grading that has been conducted between 1991 through 2004, which is 288,814 cubic yards (cut and fill), is 89,475 cubic yards more than originally approved by the original Master Plan approved in 1991 through City Council Resolution No. 91-7;
 - b. **Additional Grading.** Allow a total of 643,259 cubic yards of additional grading, which includes 97,964 cubic yards of import for all the various proposed mausoleum buildings, and all cut and fill associated with ground burials throughout the cemetery site for the life of the Master Plan. The imported fill material will be conducted in phases as each mausoleum building is constructed over an extended period of time over the next 30- to 50-years, which will be phased as follows:
 - (i) *Inspiration Slope (Area 2):* Area will be constructed in a minimum of three phases over a period of 5- to 10-years (as funding and budgeting become available), with the initial phase commencing in 2007. The construction will require adequate backfill to keep the adjacent ground burial section at a consistent level. Cumulatively, upon completion, the project will have produced 53,000 cubic yards of grading; however, each phase will require between 10,000 to 15,000 cubic yards of import. Thus, it is estimated that 40,000 cubic yards of import fill will be required for construction of the entire Inspiration Slope project.
 - (ii) *Reflection Mausoleum Expansion (Area 3):* Construction will not commence until completion of the Inspiration Slope Mausoleum, will include large excavations. Since the project will be phased and there will again be a need to import backfill for construction purposes, it is estimated that 14,000 cubic yards of imported fill will be required for this project.
 - (iii) *Areas 7 and 11:* Areas will not require import of fill since the amount of excavation far exceed the amount of backfill necessary for these mausoleum buildings, and the excess dirt will be placed and compacted in Areas 5 and 6 of the Master Plan (i.e., the southern and southwestern portions of the cemetery site), which is not expected to be developed for another 30-years.

- (iv) *Area 6:* The final project that would require substantial imported fill would be the mausoleums proposed for construction in Area 6. The project will not be constructed for at least 30 years into the future, and excess dirt from the ground burials and other mausoleum buildings will have been placed and compacted at this location. Thus, it is anticipated that approximately 34,000 cubic yards will be imported for construction purposes and backfill.
 - (v) *Baseline:* Since applicant has previously performed grading in excess of the provisions of the Master Plan, within 180 days of the date of the approval of this CUP, applicant shall submit a topographic baseline survey certified by an independent geotechnical firm approved by City showing all existing grades in a level of detail sufficient for City to determine applicant's compliance with the foregoing grading restrictions. Any grading will be measured against the baseline. The topographic survey shall be paid for by applicant.
- c. Area 6 of the Master Plan Revision (*known as Southwest Mausoleum*). Allow a reconfiguration, relocation and additional area to the previously approved mausoleum building, which was proposed under the original Master Plan to be at the south side of the cemetery, from one mausoleum building with a 77,715 square foot footprint, to 5 separate mausoleum buildings with each footprint measuring 23,653 square feet at a location that is approximately 300-feet farther west than approved in the original Master Plan;
 - d. Area 3 of the Master Plan Revision (*known as Garden of Reflections Mausoleum*). Allow a new 75,131 square foot mausoleum building to the west of the existing mortuary, whereby 9,871 square feet will be above grade and 65,260 square feet will be below grade;
 - e. Area 7 of the Master Plan Revision (*known as Southwest Terrace Mausoleum*). Reduce the size of the previously approved mausoleum building footprint at the southwest side of the cemetery, from a 60,583 square foot building footprint to a 37,820 square foot building footprint;
 - f. Area 4 of the Master Plan Revision. Only ground burials are allowed between the north perimeter road and the 8'-0" setback from the north property line. No garden walls for family estate burials, or other built-up structures are allowed in this Area, and the grade/topography of this Area shall not be raised except by written permission of the Director of Community Development. The applicant shall provide the City with a "wet-stamped" topographical survey that illustrates the existing topography prior to any grading to prepare this Area for ground burials, and the applicant shall provide the City with a "wet-stamped" topographical survey that illustrates the finish topography of Area 4 after the Area has been prepared for ground burials;

- g. Ground Burial Areas. Except for required setback areas and Area 4, where above ground structures are not allowed pursuant to Condition No. 1f below, areas in the Master Plan Revision called out for ground burials may include family estates, which are areas designated for the burial of a group of persons who typically are related by blood or marriage, and which may include low garden walls less than 36-inches in overall height around their perimeters to enclose them or more elaborate headstones that are built above-ground that are no taller than 6-feet high. These garden walls and headstones are allowed to contain above-ground interments. Above-ground structures including, but not limited to, garden walls and above-ground headstones, shall not be allowed on the rooftops of any mausoleum building.
- h. Burial Sites; Excess Material for Areas 5-6. Preparing ground burial sites includes grading an area by excavating up to 8-feet below existing grade (depending, if these are single or double depth lawn crypts), filling a layer of sand for erosion control purposes, constructing concrete outer burial containers containing burial vaults, and then placing a layer of the previously excavated dirt is filled to match pre-excavated grade. Excess earth material resulting from the burial sites will be transported to Areas 5 and 6 of the Master Plan Revision. It is approximated that 137,000 cubic yards of fill will be necessary for these areas to raise the grade to accommodate mausoleum buildings and ground burials, and appropriate drainage to the roadways. This quantity includes ground spoils from throughout the cemetery site, excess cut material from mausoleum projects in other areas, and import of additional fill material.
- i. Building Silhouettes. Prior to construction of each building contained in the approved Master Plan and Master Plan Revision, including any substantial modification or reconstruction of such buildings the applicant shall submit a grading plan (See AQ1), and a temporary frame silhouette must be constructed for each mausoleum building at least 30-days prior the Director's consideration of the building and submission to the Planning Commission per Condition 2. Once the silhouette is constructed, a licensed engineer, land surveyor or architect must certify that the silhouette accurately depicts the location, height and outline of the proposed building. The certification must be submitted to Staff at least 30-days prior to the Director's decision.
- j. Small Buildings. Except for mausoleum or similar buildings addressed in Condition 1.k or otherwise exempt per code, all other buildings less than 120 square feet in size, not exceeding 12 feet in height, located outside required setbacks, not on an extreme slope (35% or more), and not on the roof of a mausoleum building shall be subject to review and approval by the Director of Community Development through a Site Plan Review.

- k. Administrative Substantial Compliance Review. The Director of Community Development is authorized to make a determination (i) that improvements are in substantial compliance with the Master Plan ("substantial compliance review"), (ii) that minor modifications to the approved plans or any of the conditions are required and will achieve substantially the same results as would strict compliance with said plans and conditions, (iii) that the matter should be referred to the Planning Commission pursuant to Condition 2, or (iv) no review is required as it fully conforms to the Master Plan. Prior to new construction, modification or major reconstruction of improvements, they shall be submitted to the Director for review. If the Director determines to conduct administrative compliance review to determine if the requested improvements substantially comply with the Master Plan as revised, such administrative process shall comply with the City's Site Plan Review, as applicable, unless otherwise provided herein. The administrative compliance review shall include review of any customary cemetery-related features including but not limited to niches, water features, garden walls, columbaria, bench memorials, walls, gardens, upright memorial features, statues, stone features (including stone landscaping features), cenotaph walls, cremation and other burials, topiaries, sculptures and other artistic works, gazebos, ossuaries, bridges, cremation benches, outer burial containers and above ground vaults, provided that the height of such features shall not exceed sixteen (16) feet, except that within any designated setback area, such features shall not exceed six (6) feet. The addition of trees throughout the Park shall also be deemed to be in substantial compliance with the Master Plan. The administrative compliance review shall also include rooftop burials at mausoleums.

The review shall be conducted by the City's Director of Community Development and applicant shall provide any information required by the Director on forms specified by the Director. Director of Community Development shall give a 15 day written notice to owners of property within a 500-foot radius of the site of the improvements, if any, to persons requesting notice, to all affected homeowners associations, and to the property owner in accordance with Rancho Palos Verdes Development Code Section 17.80.090. Copies of any comments received will be given to the applicant who shall have 7 days to respond in writing. Director of Community Development shall make a written determination of substantial compliance or noncompliance, which may include imposing conditions to assure compliance, and shall give written notice of the decision to the aforesaid parties and the applicant, who shall have 15 days to appeal the decision in writing to the Planning Commission. If a timely appeal is received, the Planning Commission shall consider the matter under Condition 2 hereof. With respect to any conditions herein which provide for Administrative Compliance Review or refer to Site Plan Review, such conditions shall require compliance with the procedure of this Section 1k.

- I. Relocating Historic Church. Revision "D" to conditional use permit of the Green Hills Master Plan allows the placement of an historic church building that is currently located in the *San Pedro* community of the City of Los Angeles, onto the cemetery property. The church building will be located in Area 5 of the Master Plan, southwest of the existing duck pond. The church building measures less than 1,100 square feet in area, and has a steeple at the front of the building that is 7-feet wide, 7-feet deep, and 38-feet tall.
 - (i) All appropriate permits shall be obtained from the Building and Safety Division prior to relocating the historic church building to the cemetery.
 - (ii) Prior to the relocation of the historic church building, the Green Hills Cemetery personnel shall inform City Staff of the date and time in which the historic church building will be transported, along with a plan illustrating the route.
 - (iii) The church building may be used for funeral services only, and is not allowed to be used for congregational church services. Further, the existing bell may remain as a decorative feature only, and the bell or bell recordings are not allowed to be used in conjunction with the church building.
 - (iv) Major additions to the church building or relocation of the church building to another location on the property are not allowed without prior Planning Commission approval.
 - (v) All approvals necessary to relocate the church from the San Pedro community of the City of Los Angeles to the Green Hills Cemetery shall be obtained and submitted to the City of Rancho Palos Verdes' Public Works Department and Community Development Department prior to relocation of the church.

1.1 Administration Building. This approval is Revision "E" to the Green Hills Master Plan, and shall be consistent with the approved plans prepared by Bolton Engineering Corp. dated April 9, 2015 (sheets C-0, C-1, ESCP, RW-1) and Anthony Frank Inferrera dated April 4, 2015 (sheet A-0 only), that allows the following improvements to and around the existing Administration Building:

- a. Generally. Construction of 3,323ft² of single-story office additions, 648ft² covered walkway extension, and 316ft² covered entry to the Administration Building;
- b. Temporary Modular Buildings. Allowing the temporary modular buildings to remain on site, but be removed prior to April 22, 2017 or Building Permit Final, whichever comes first. Any extension requests shall be reviewed by the Planning Commission prior to April 22, 2017. Failure to remove said

structures will constitute as a violation and deem the Conditional Use Permit Revision null and void; and

- c. Parking Area. Reconfiguration of the parking area to add 22 new parking spaces (81 required, 95 proposed for the Administration Building).
- d. Grading. Conduct 325yd³ of grading for the following emergency access and ADA access/parking improvements:
 - (i) Widen the driveway (portion of Arroyo Drive) located south of the Administration Building from approximately 20' to 26' supported by a 2.5' tall retaining wall to accommodate emergency vehicles.
 - (ii) Widen the access and parking area to the north of the Administration Building to accommodate adequate handicap van parking and ADA access area; thereby necessitating the removal of the existing 3' tall retaining wall and the construction of a new replacement retaining wall measuring up to 4.45' in height.

(CONDITIONS OF APPROVAL 1.1.a THROUGH 1.1.d ADDED AND AMENDED PER PER PC RESOLUTION NO. 2014-21 ON JULY 22, 2014 AND PC RESOLUTION NO. 2015-09 ON MAY 12, 2015)

1.2 Additional Conditions Pertaining to Administrative Building. Revision "E" shall be subject to the following specific conditions:

- (a) Setbacks.
 - (i) The following setback provisions shall apply: 25' front and street-side;
 - (ii) interior and side if abutting a residential zoning district and 25' if abutting a nonresidential zoning district.
- (b) Parking
 - (i) Parking areas shall provide for a 25' outside turning radius within the facility.
 - (ii) All parking areas shall be surfaced with asphaltic or cement concrete paving which is at least 3" thick.
 - (iii) All parking stalls shall be clearly marked with lines, and access lanes shall be clearly defined with directional arrows to guide traffic. Except for parallel parking stalls, standard parking stalls shall be of a minimum 9' width by 20' depth in area. Parallel parking stalls shall be a minimum of 26' in depth.

- (iv) Disabled parking spaces shall be in accordance with the dimensions and specifications of the state amended Uniform Building Code.
- (v) A minimum of 5% of the paved parking area shall be devoted to interior planting areas. All planting areas shall be at least 3' wide. Perimeter planting shall not be considered part of this required interior planting.
- (vi) Wherever a center divider separates parking stalls facing each other, tree wells shall be established not more than 50' apart for larger trees, or not more than 30' for small and medium sized trees.

c. Landscaping

- (i) All plantings shall be maintained free of debris and in conformity with the accepted practices for landscape maintenance.
- (ii) A 6" high cement concrete curb shall be constructed at the edge of all landscaped areas.

d. General

- (i) If the applicant has not submitted an application for a building permit for the approved project or not commenced the approved project as described in Section 17.86.070 of the City's Municipal Code within one year of the final effective date of this Resolution, approval of the project shall expire and be of no further effect unless, prior to expiration, a written request for extension is filed with the Community Development Department and approved by the Director of Community Development.
- (ii) Prior to plan check submittal to the Building & Safety Division, the applicant shall provide an updated Master Plan reflecting the modifications to the Administration Building and related parking area to the Planning Division.

(CONDITIONS OF APPROVAL 1.2.a-I ADDED AND AMENDED PER PC RESOLUTION NO. 2014-21 ON JULY 22, 2014 AND PC RESOLUTION NO. 2015-09 ON MAY 12, 2015)

1.3 Area 11. The following conditions are applicable to the Pacific Terrace/Memorial Terrace Mausoleum building and Area 11 of the Green Hills Master Plan and shall supersede any inconsistent conditions that govern other areas of the Green Hills property:

- a. Tractor Ramp. The entire length of the tractor ramp shall be left clear at all times when not in use. No vehicles, landscaping equipment, construction

equipment, storage containers, etc. are allowed to be parked, stored or allowed to be left on the tractor ramp.

- b. Screen Rear Wall. The Northern (rear) wall of the mausoleum building shall be screened by a type of wall vine landscaping. Said landscaping shall be planted and allowed to grow on the wall only, to the satisfaction of the Director of Community Development and shall not grow above the wall.
- c. Landscaping. With the exception of ground cover, no other vegetation shall be planted on the roof of the Pacific Terrace/Memorial Terrace Mausoleum. For other areas within Area 11 that are outside the footprint of the Pacific Terrace/Memorial Terrace Mausoleum, only ground cover, shrubs and other vegetation less than the height of the existing wall on the property line are allowed. Vines are allowed on the northern wall of the Pacific Terrace/Memorial Terrace Mausoleum building provided that they do not exceed the solid building parapet.
- d. Ramp Guardrail. The guardrail fence along the tractor ramp and along the top of the mausoleum building along the north (rear) shall not be a solid wall and shall be maintained as a wrought iron guardrail.
- e. Additions to Mausoleum. No additions or expansion shall be allowed to the existing Pacific Terrace/Memorial Terrace Mausoleum in Area 11. No new mausoleum building shall be constructed within Area 11 without first obtaining Planning Commission approval at a duly noticed public hearing following the process set forth in Condition 2.

1.3.5 Area 11 Rooftop Burials. The following conditions are applicable to all burials on the roof of the Pacific Terrace/Memorial Terrace Mausoleum building:

- a. Pre and Post Service. Pre-service burial/plot preparation and post-service plot backfilling of the rooftop ground interments on the Pacific Terrace/Memorial Terrace Mausoleum building shall only be allowed between the hours of 10:00 a.m. and 3:00 p.m., Monday through Sunday. (See Condition 17)
- b. Hours. Burials and all associated services on the roof top ground interments of the Pacific Terrace/Memorial Terrace Mausoleum building shall only be allowed between the hours of 10:00 a.m. and 3:00 p.m., Monday through Sunday.
- c. Haul Vehicle. The use of a mini-haul vehicle (which is illustrated in Green Hills' power point presentation to the Planning Commission on May 13, 2014) shall be limited to pre-service burial/plot preparation and post-service plot backfilling of the rooftop ground interments during the hours specified in Condition 1.3.f above.

- d. Sound. The use of amplified sound shall be prohibited on the rooftop of the Pacific Terrace/Memorial Terrace Mausoleum building. This prohibition shall not apply to the amplified sound for the playing of “taps” as part of funeral services for military personnel and for police, fire and other first responders.
- e. Tenting. All services on the rooftop of the Pacific Terrace/Memorial Terrace Mausoleum building shall be conducted within temporary covered tenting that is enclosed on a minimum of 2 sides, as illustrated in Green Hills’ power point presentation to the Planning Commission on May 13, 2014. One of the two covered sides shall be the north side facing the *Vista Verde Condominium* complex. Said temporary tenting shall be erected no earlier than 2 hours prior to the burial service and shall be removed within 2 hours after the burial service.
- f. Sales. Sales personnel shall be allowed to show potential roof-top ground interments plots on the Pacific Terrace/Memorial Terrace Mausoleum building in Area 11, only between the hours of 10:00 a.m. and 3:00 p.m. Monday through Sunday.
- g. Notice to Property Owners. Small flags shall be placed on any burial site located on the rooftop of the Pacific Terrace/Memorial Terrace Mausoleum within 24 hours after a burial service has been scheduled for that site, to provide neighboring property owners with advanced notice of scheduled interments and burial services, unless burial will be in less than 24 hours from death in which case flags will be placed as soon as possible before the service. Green Hills shall also post on its publicly accessible website (www.greenhillsmemorial.com) additional details concerning the anticipated time and date of scheduled burial services.
- h. Supervision. At least one employee of Green Hills shall attend and monitor every service occurring on the rooftop of the Pacific Terrace/Memorial Terrace Mausoleum for the entirety of all burial services to ensure that the services are orderly and comply with these conditions of approval.
- i. Excluded Areas. In no event shall below-grade interments be allowed on the roof of the Memorial Terrace Mausoleum building that are within 16-feet from the northern property line. Specifically, plots illustrated in sections 540 through 553, as depicted in the attached Exhibit C of this Resolution, are hereby eliminated. **(RENUMBERED DUE TO THE DELETION OF THE ORIGINAL CONDITION 1.3.n IN PC RESOLUTION NO. 2014-29)**

- 2. Review of Compliance with Master Plan. Construction and build-out of the Green Hills Memorial Park Cemetery shall be in substantial compliance with the Master Plan Revision approved by the Planning Commission on April 24, 2007 and July 22, 2014, and the City Council on November 17, 2015, as indicated in these conditions of approval. Substantial Compliance Reviews shall, unless otherwise

stated, be performed by the Director of Community Development through Site Plan Review subject to appeal to the Planning Commission (or thereafter to the City Council). This is further described in Condition 1k, above. Certain Substantial Compliance Reviews, as set forth herein, are performed directly by the Planning Commission. Matters subject to direct Commission review include: (i) the construction of any mausoleum or other significant building, or the substantial reconstruction or reconstruction thereof, as determined by the Director; (ii) any significant change in grading from that shown in the Master Plan, (iii) to the extent any areas in the Master Plan are not shown as designated for specific uses, or for burials (the "Undesignated Areas"), the specific use and development plan for such Undesignated Areas showing all planned structures. In addition, besides performing specified compliance reviews, any modification to the Master Plan or conditions of approval of this CUP must be submitted to and approved by the Planning Commission.

The Planning Commission shall consider all such matters only through a noticed public hearing. Notice of said public hearing shall be published and provided to owners of property within a 500-foot radius, to persons requesting notice, to all affected homeowners associations, and to the property owner in accordance with Rancho Palos Verdes Development Code Section 17.80.090. At that time, the Planning Commission may determine there is substantial compliance or add, delete, or modify the conditions of approval, as deemed necessary and appropriate. Any interested person may appeal, such action to the City Council pursuant to Section 17.80 of the RPVMC. Applicant shall make deposit and pay all City fees for compliance review or amendment.

3. **Grading Area 4.** Prior to grading operations to prepare Area 4 for ground burials, the applicant shall submit a grading permit application, signed by an individual designated by the Green Hills Memorial Park Board of Directors for review and approval by the Director of Community Development to ensure consistency with the approved Master Plan Revision. If it is found to be consistent with the approved Master Plan Revision, the grading permit will be approved administratively, without further public notice, review or hearings. However, if the Director of Community Development finds that the project is not in substantial compliance with the approved Master Plan Revision, then it shall require review and approval by the Planning Commission in accordance with the provisions of Condition 2.
4. **Applicant Acceptance of Conditions.** The applicant and/or property owner shall submit to the City a statement, in writing, that they have read, understand and agree to all conditions of approval contained in this approval. Failure to provide said written statement within ninety (90) days following the date of this approval shall render this approval null and void.
5. **Mitigation Monitoring.** All mitigation measures contained in the approved Mitigation Monitoring Program contained in P.C. Resolution No. 2007-32 for the Mitigated Negative Declaration, shall be incorporated into the implementation of the proposed project and adhered to. The mitigation measures are as follows:

A-1: No new light poles, light standards, or other form of lighting is allowed along the roadways within the cemetery without prior written approval by the Director of Community Development.

A-2: No exterior, building-mounted lighting is allowed on the façade elevations that are closest to and oriented towards residences. All other lighting shall be arranged and shielded as to prevent direct illumination of surrounding property.

A-3: All pedestrian-oriented lights along the exterior of the mausoleum buildings shall be in the form of lights that are inset into the adjoining walls. Further, the lighting shall be arranged and/or shielded as to prevent direct illumination of surrounding property and prevent visibility of the light source.

AQ-1: Prior to construction of each building contained in the approved Master Plan and Master Plan Revision, the applicant shall submit a grading permit application, signed by an individual designated by the Green Hills Memorial Park Board of Directors, for review and approval by the Planning Commission to ensure consistency with the approved Master Plan, in accordance with Condition 2, which shall include, but not be limited to, grading quantities, height, area and location of buildings and that the buildings will not have adverse impacts upon adjacent properties.

AQ-2: During construction of any improvements associated with the master plan, the owner shall ensure that all unpaved construction areas shall be watered at least twice a day during excavation and construction to reduce dust emissions and meet SCAQMD Rule 403 which prohibits dust clouds to be visible beyond the project site boundaries.

AQ-3: During construction of any improvements associated with the master plan, the owner shall ensure that all clearing, grading, earth moving or demolition activities shall be discontinued during periods of high winds (i.e., greater than 15 mph), so as to prevent excessive amounts of dust.

AQ-4: During construction of any improvements associated with the master plan, the owner shall ensure that General contractors shall maintain and operate construction equipment so as to minimize exhaust emissions.

AQ-5: During construction of any improvements associated with the master plan, the owner shall ensure that on-site construction vehicle speeds are limited to a maximum of 15 miles per hour on unpaved roads.

AQ-6: During construction of any improvements associated with the master plan, the owner shall ensure that all on-site construction roads with vehicle traffic will be watered periodically as necessary for dust suppression.

AQ-7: During construction of any improvements associated with the master plan, the owner shall ensure that street sweeping will be initiated if visible dust is deposited upon public paved roadways due to the project.

AQ-8: During the daily cemetery operations, the owner shall ensure that all clearing and earth moving will be discontinued during periods of high winds (i.e., greater than 25 mph), so as to prevent excessive amounts of dust. This shall not apply to excavations for individual burial plots prior to a service, or to filling of individual burial plots after a service.

AQ-9: During the daily cemetery operations, the owner shall ensure that on-site vehicle speeds associated with the transporting of earth materials are limited to 15 miles per hour on unpaved roads.

AQ-10: The owner shall ensure that grave spoils are placed in Area 5 and/or Area 6 of the Master Plan, which will be placed to fill the areas. A minimum 8-foot high chain link fence with a mesh material to reasonably screen the fill area from neighbors shall enclose and confine said area.

AQ-11: The confined fill locations described in mitigation measure AQ-10 above, shall be regularly watered to reduce dust emissions and meet SCAQMD Rule 403 which prohibits dust clouds to be visible beyond the project site boundaries.

AQ-12: A weatherproof notice/sign setting forth the name of the person(s) responsible for the daily dirt movement to these confined fill locations and a phone number(s) to be called in the event that dust is visible from the confined fill locations described in mitigation measure AQ-10 above, shall be posted and displayed on the fencing.

AQ-13: If stockpiling of earth material becomes necessary for ultimate use as backfill, stockpiling shall only be located in Area 5 and/or Area 6 of the Master Plan, and shall be subject to conditions AQ-10, AQ-11 and AQ-12 above.

AQ-14: At the time any substantial compliance review is performed in accordance with Conditions 1k or 2, or if any applicant proposes any changes for the Master Plan, the Director of Community Development can perform a compliance review of the whole project in accordance with all conditions of approval associated with the Master Plan and Master Plan Revision. At that time, the City approving body may add, delete, or modify the conditions of approval as deemed necessary and appropriate. Review procedure will be as set forth in Conditions 1k or 2, as appropriate, and are subject to appeal as provided therein. Any administrative review may be sent directly to the Planning Commission by the Director of Community Development.

GS-1: The applicant shall submit a geotechnical report for review and approval by the City Geologist prior to the issuance of a building permit for each mausoleum building or grading permit for any earth movement beyond that associated with ground interment sites, unless the City Geologist deems that a geotechnical report is not warranted. Further, prior to any additional placement of fill in Area 5, a detailed grading plan with relevant geotechnical reports supporting recommendations for grading in Areas 5 and 6 shall be submitted by the applicant

to the City for review and approval by the Building and Safety Division and the City Geologist prior to issuance of a building permit for any mausoleum.

GS-2: The applicant shall ensure that all applicable conditions as specified within the geotechnical report and all measures required by the City Geologist are incorporated into the project.

HW-1: The applicant shall prepare a Standard Urban Stormwater Mitigation Plan (SUSMP) along with a Maintenance Agreement and Transfer. The SUSMP and related information shall be reviewed and approved by the Director of Community Development, or his/her designee prior to the issuance of grading and building permits for any mausoleum building.

N-1: Construction activity of the mausoleum buildings and grading operations shall be limited to the hours of 7:00 am and 4:00 pm, Monday through Friday. There shall be no construction on Saturdays, Sundays or federally observed holidays unless a Special Construction Permit is obtained prior to work on a Federally observed holiday.

N-2: During demolition, construction and/or grading operations, trucks shall not park, queue and/or idle at the project site or in the adjoining street rights-of-way before 7:00 am Monday through Friday and before 9:00 am on Saturday, in accordance with the permitted hours of construction stated in this condition. When feasible to do so, the construction contractor shall provide staging areas on-site to minimize off-site transportation of heavy construction equipment. These areas shall be located to maximize the distance between staging activities and neighboring properties, subject to approval by the building official.

N-3: As indicated in mitigation measure AQ-1413 above, the project shall be reviewed by the Planning Commission annually, commencing on the date of final approval, to review the applicant's compliance with all conditions of approval associated with the Master Plan and Master Plan Revision. At that time, the Planning Commission may add, delete, or modify the conditions of approval as deemed necessary and appropriate. Notice of said review hearing shall be published and provided to owners of property within a 500' radius, to persons requesting notice, to all affected homeowners associations, and to the property owner in accordance with Rancho Palos Verdes Development Code Section 17.80.090.

6. **Setbacks Below Ground.** Setbacks for below ground interments sites, "Garden" burial sites with no above-ground structures (other than benches for seating), and roads shall be as follows:

North and South: 8' (except the northwest corner between the western property line and maintenance yard, which shall be 16', with the exception of the thirteen (13) interments

already placed within the northwest corner and the six (6) companion plots which have already been sold
East and West: 0'

7. **Setbacks Above Ground.** Setbacks for above ground structures, including but not limited to mausoleums (except the Pacifica Mausoleum and the Pacific Terrace/Memorial Terrace Mausoleum shown in Area 11 of the Master Plan, which are addressed in Condition 8 and 8.a) and crypts shall be as follows:

North: 80' or no closer than the northern perimeter road, whichever is greater from the north property line that is north of the maintenance yard, and 40' (except for the Mausoleum constructed and finalized as of 2013 the setback shall be 8') from the north property line that abuts the *Vista Verde Condominium* complex in the City of Lomita.
South: 40'
East: 25'
West: 5'

8. **Setbacks for Pacifica Mausoleum** (Area 1). Setbacks for the Pacifica Mausoleum are as follows:

West: 15' (existing) / 5' for the northwestern addition
North: 40'-0" (expansion northerly along the eastern edge of the existing building shall be offset 8'-0" to the west from the existing eastern edge of the building)
East: 25'
South: If abutting a residential zoning district, 40'. If abutting a nonresidential zoning district, 25'

- 8.a **Setbacks For Area 11.** Setbacks for the existing Pacific Terrace/Memorial Terrace Mausoleum building in Area 11 shall be as follows:

North: 8'-0 for the portion constructed and finalized as of 2013. 40' for future expansions
West/South: If abutting a residential zoning district, 40'. If abutting a nonresidential zoning district, 25'.
East: 25'

9. **Music.** Any live and/or amplified music shall occur only during funeral services, community events, or visits. Funeral services music and community event music shall be limited to the duration of the service or event. In no case shall the live and/or amplified music exceed 65 dba at the common property lines abutting a

Residential Zoning District. The noise level shall be enforced by the neighbors through civil means.

10. **Signage.** The applicant shall install and maintain signage at various locations throughout the Cemetery to inform visitors of rules that prohibit on-site consumption of alcoholic beverages, prohibit excessive noise and amplified music, and disruptive behavior. The applicant shall submit a signage plan for review and approval by Staff prior to installation of any signage. The signage plan shall illustrate the locations, height, design and content of the signs.
11. **Standby Personnel for Complaints.** The applicant shall supply the abutting neighbors with the name and contact information for the Green Hills Cemetery personnel that can be contacted about excessive noise or other activities that result in impacts to the immediate neighborhood.
12. **Employee Training.** The applicant shall continue to provide for new employees, training programs on a regular basis, in accordance with Cal OSHA recommendations on the proper handling and safety requirements of equipment and material in the mortuary and crematory, as well as concerning compliance with the requirements of this CUP.
13. **Construction Sites.** All construction sites shall be maintained in a secure, safe, neat and orderly manner, to the satisfaction of the City's Building Official. All construction waste and debris resulting from a construction, alteration or repair project shall be removed on a weekly basis by the contractor or property owner. Existing or temporary portable bathrooms shall be provided during construction. Portable bathrooms shall be placed in a location that will minimize disturbance to the surrounding property owners, to the satisfaction of the City's Building Official.
14. **Trash and Debris.** The construction site and adjacent public and private properties and streets shall be kept free of all loose materials resembling trash and debris in excess of that material used for immediate construction purposes. Such excess material may include, but is not limited to: the accumulation of debris, garbage, lumber, scrap metal, concrete, asphalt, piles of earth, salvage materials, abandoned or discarded furniture, appliances or other household fixtures. All landscape pruning, including but not limited to grass, leaves, branches, fertilizer, etc., shall be properly stored in areas with minimal visual impact to adjacent homeowners, and shall be stored in appropriate containers and disposed of in a proper manner
15. **Storage of Equipment and Supplies.** When not being used in the daily operations of the cemetery, equipment and supplies shall be stored in areas with minimal visual impact to adjacent homeowners or in the maintenance yard if possible. Equipment and supplies shall be neatly stacked so they do not pose a safety hazard or become a property maintenance issue. All landscaping equipment and vehicles, and all vehicles used for maintenance and/or burial preparation shall be stored in the maintenance yard.

16. **Temporary Trailers.** Temporary trailers are only allowed during construction of the mausoleum buildings. The location of any such trailers shall be illustrated on plans for the Grading Permit as described and required in condition AQ-1 above, and shall be approved by the Director of Community Development. Further, the trailer shall be removed prior to building/grading permit final.
17. **Hours of Operations**
- a. **General.** This section shall govern hours of operations except for any provision concerning specific areas of the cemetery and Section 1.3.5a concerning rooftop burials.
 - b. **Hours of Facilities.** Hours of public operation for the flower shop are limited to 7:00 a.m. to 9:00 p.m., Monday through Sunday. The Administration Building public hours are limited to 8:00 a.m. to 9:00 p.m. Monday through Sunday. The Chapel may be open to the public from 7:00 a.m. to 9:00 p.m. Monday through Sunday. The cemetery grounds for visits shall be open from 7:00 a.m. to dusk.
 - c. **Construction Working Hours.** Construction and grading activities, including but not limited to equipment warm up, geologic investigations, interment excavation for placement of vaults and installation or removal of large landscape materials or landscaping maintenance shall be limited to daytime working hours (7:00 a.m. to 4:00 p.m.) on weekdays only.
 - d. **Non Construction and Burial Related Activity.** Excavation for removal and replacement of vault tops for funeral service preparation, individual placement of vaults for funeral services and operation of landscape maintenance equipment shall be allowed in any area of the park between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday, and between 8:00 a.m. and 5:00 p.m. on Saturday, Sunday, and Federally observed Holidays.
 - e. **Construction In Proximity to Residential.** Notwithstanding the foregoing, within 120 feet of any property line abutting a Residential Zoning District, no construction or grading, including grading operations to prepare sites for ground burials, shall occur before 9:00 a.m. or after 3:30 p.m. All equipment shall be equipped with a muffler to reduce on-site grading and construction noise levels.
18. **Landscaping Maintenance.** All existing and future landscaping shall be properly maintained in a healthy and trimmed manner at all times.
19. **View Impairment.** All existing and proposed landscaping between the north property line and the northern perimeter road shall not significantly impair any near or far view as defined by the Development Code. A landscape plan limited to

plants, trees and foliage that are 48-inches or taller for this Area shall be submitted to the Director of Community Development for review and approval prior to grading operations to prepare Area 4 for ground burials.

20. **Tree Screening.**

- a. **Administrative Building Trees.** The existing eucalyptus trees on the west side of the Administration Building parking lot shall not be removed unless required by the holder of the easement in which the trees are located or acceptable evidence is provided to the Director of Community Development from a certified arborist supporting removal.
- b. **Tree Screen at Mausoleum.** If desired by the Vista Verde Condominium Association, applicant shall plant suitable trees or landscape screening between the condominium building and Mausoleum. The Director shall approve the materials, size, and plant spacing. The plantings shall be made within 180 days of the date hereof. Applicant shall keep the screen in good health and replace any plants when necessary to maintain the screen without obstructing significant views.

21. **Hedges.** When Inspiration Slope is developed, the existing hedge that separates Crescent Lawn and Vista Del Pointe from this area shall be removed. The existing hedge located on the applicant's property on the south property line adjacent to the rear yards on residential lots located on Avenida Feliciano shall be pruned and maintained so it does not exceed the height of the chain link fence, which is 8'-0" high. The existing and future screen planting in the 8'-0" setback along the northern property line shall be maintained no higher than the fence height unless specifically requested in writing by the appropriate adjacent property owner.

22. **No Vegetation Area 2.** With the exception of ground cover, no vegetation shall be planted in Area 2 (Inspiration Slope) of the Master Plan Revision approved April 24, 2007. Drought tolerant, low maintenance and erosion controlling landscaping is required in the western setback adjacent to the Pacifica Mausoleum expansion.

23. **Inspiration Slope.** The mausoleum on Inspiration Slope shall be located as shown on the Master Plan Revision so as not to impair views from the Peninsula Verde neighborhood. The Director of Community Development shall approve the exact location and height of this mausoleum building. The Director of Community Development may review and approve a retaining wall that contains niches for cremated remains extending from the mausoleum building not exceeding an average of 8'-0" in height connecting to the existing wall and a maximum 42" high guardrail and pilasters on top. The top of the retaining wall shall not exceed the height of the adjacent road level (other than a small curb sufficient in height to control the water and direct water down the roadway).

24. **Landscaping and Irrigation Plans.** Landscaping and irrigation in all setbacks require review and approval by the Director of Community Development prior to

installation. Irrigation systems shall be designed to provide adequate coverage with no over-spray, runoff, or excessive quantities of water output. Use of drip irrigation systems is required wherever possible. A low water use turf shall be used in all new lawn areas. Such landscape and irrigation plan for the setback areas shall be submitted to the Community Development for review and approval within 180 days of final approval of the Master Plan Revision.

25. **Slope Grades Maximum.** Finish slopes and grades shall not exceed 3:1. On 4:1 or steeper slopes, erosion controlling plant material and other erosion control methods, such as jute netting, shall be required and installed.
26. **Sewer and Water Facilities.** The site shall be served by adequately sized water system facilities as determined by the Los Angeles County Fire Department. All Los Angeles County Fire Department requirements shall be satisfied prior to building permit issuance for the mausoleum building. Any new sewer and water facilities must tie into local main lines. The usage of the site may be limited by the size and type of sewage and water systems that can legally be installed
27. **Fencing.** The existing chain link fence and wrought iron fence, which surrounds the perimeter of the cemetery site, shall be maintained. On those areas of the fence specifically owned by the cemetery, and where not directed otherwise by the adjacent water authority, no barbed wire on the top of these fences is allowed, and any existing barbed wire shall be removed within 90-days of final approval of this Master Plan Revision.
28. **Road Paved.** The road in Area 5 and Area 6 (of the Master Plan Revision approved April 24, 2007) that parallels the south property line shall be paved and maintained by the applicant.
29. **Storage of Excavations.** Temporary storage (up to 72-hours) of interment excavations is allowed provided that such excavation is stored within an appropriate container.
30. **Building Heights.** The overall building heights for the buildings are limited to the heights approved by the Planning Commission. The heights of each building shall be certified by a registered Civil Engineer and submitted to the Community Development Department prior to building permit final. With the exception of the mausoleum building on Inspiration Slope and Lake View Terrace (Area 6), all mausoleum buildings shall not exceed 20-feet in height as measured from the highest finished grade elevation covered by the structure to the highest point of the structure, and shall not exceed an overall height of 30-feet as measured from the lowest finished grade adjacent to the building to the highest point of the structure. Once a building height has been determined by the Planning Commission, a ridge height certification will be required prior to Building Permit Final.
31. **Compliance With Authorities.** Development shall comply with all requirements of the various municipal utilities and agencies that provide public services to the

site. On an annual basis, the applicant shall provide the City with copies of permits from the South Coast Air Quality Management District and Los Angeles County Fire Prevention Bureau for storage of fuel. The applicant shall also provide copies of permits from the Los Angeles County Fire Department, Hazardous Maintenance Division Section and Fire Prevention Bureau, for the chemicals stored in the embalming rooms in the Administration Building. Permits from the South Coast Air Quality Management District for the crematory must also be provided.

32. **State Permits.** On an annual basis, the applicant shall provide the City with a copy of permits and/or licenses from the State Cemetery and Funeral Board.
33. **Encroachment Permits.** Prior to conducting any work in the public right of way, such as for curb cuts, dumpsters, temporary improvements and/or permanent improvements, the applicant shall obtain an encroachment permit from the Director of Public Works.
34. **Easements.** The owner shall submit a title report within 90 days of final approval of this Master Plan Revision. All easements shown on the title report shall be clearly delineated on an accompanying site plan. Any grading, construction, placement of structures, including but not limited to walls, fences, and interments on any easement, requires prior written permission from the easement holder.
35. **No Waiver of Law.** Approval of this permit shall not be construed as a waiver of applicable and appropriate zoning regulations, or any Federal, State, County and/or City laws and regulations. Unless otherwise expressly specified, all other requirements of the City of Rancho Palos Verdes Municipal Code shall apply.
36. **Conflict of Law.** The project development on the site shall conform to the specific standards contained in these conditions of approval or, if not addressed herein, shall conform to the Cemetery development standards of the City's Municipal Code, including but not limited to height, setback and lot coverage standards. In the event that a Planning requirement and a Building & Safety requirement are in conflict with one another, the stricter standard shall apply.
37. **Revocation.** Should the applicant fail to comply with any of these conditions of approval or mitigation measures, after written notice to applicant and the opportunity to cure, the City may initiate revocation procedures for this permit, which shall include a public hearing. Notice of said public hearing shall be published and provided to owners of property within a 500' radius, to persons requesting notice, to all affected homeowners associations, and to the property owner in accordance with Rancho Palos Verdes Development Code Section 17.80.090. Failure to comply with and adhere to all of these conditions of approval may be cause to revoke the approval of the project pursuant to the revocation procedures contained in Section 17.86.060 of the City's Municipal Code.
38. **Submission Property Line Survey Maps.** Within 30 days from the date of the approval of this Resolution, the applicant shall submit a certified property line

survey to the Director of Community Development verifying that the existing above ground interments and structures exceeding 6-feet in height are located outside of the required five foot setback along the west property line in the area south of the Pacifica Mausoleum building. (Area 1)

39. **Fees and Costs.** Except as otherwise specified, applicant is responsible for the costs of complying with the provisions of the Master Plan, Revised Master Plan, and of this CUP.
40. **Mediation with Homeowners.** Owners in the Vista Verde Condominium Project have made objections and claims against the City concerning the fact that the Pacific Terrace/Memorial Mausoleum is constructed at the 8 foot setback line instead of the previous setback which existed before 2007. If requested by the Vista Verde homeowners, Green Hills will undertake an appraisal to determine if there has been a loss of real estate value resulting to the homeowners from the construction of the Mausoleum and what that loss might be. Green Hills will participate in a mediation process with the Vista Verde homeowners and attempt to settle claims by such homeowners for values up to the amount of the appraisal differential, using either the existing appraisal or a new appraisal requested by the Vista Verde homeowners. City representatives will also participate in this mediation on behalf of City. If the Vista Verde homeowners refuse to participate in the mediation, or the mediation does not result in a settlement of the disputes, then Green Hills is responsible for defense of its entitlements pursuant to the indemnification provisions in Condition 41.
41. **Defense of Claims Against Project.**
 - a. **Non-Liability of City.** The Parties acknowledge that: (i) In the future there may be challenges to legality, validity and adequacy of the Project approvals; and (ii) If successful, such challenges could delay or prevent the ongoing use of the Project as provided herein. In addition to the other provisions of the CUP, including, without limitation, the provisions of this Section, City shall have no liability under the CUP for the inability of Green Hills to develop the Property as contemplated by the Master Plan or the CUP as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, Master Plan, the Land Use Regulations, the CUP, or portions thereof, are invalid or inadequate or not in compliance with law.
 - b. **Revision of Land Use Restrictions.** If for any reason the General Plan, Master Plan, Land Use Regulations, this CUP or any part thereof of the Project approvals is hereafter judicially determined as provided above to be not in compliance with the State or Federal Constitutions, laws or regulations and if such noncompliance can be cured by an appropriate amendment thereof otherwise conforming to the provisions of this Agreement, then the CUP shall remain in full force and effect to the extent

permitted by law. The Master Plan and this CUP shall be amended, as necessary, in order to comply with such judicial decision.

- c. Scope of Indemnification. Green Hills shall agree to defend, indemnify and hold harmless, the City, its agents, officers and employees from any claim, action or proceeding against the City and the application will either undertake defense of the matter and pay the City's associated legal costs, or will advance funds to pay for defense of the matter by the City Attorney. If the City fails to promptly notify Green Hills of any such claim, action or proceeding or fails to cooperate fully in the defense, Green Hills shall not, thereafter, be responsible to defend, indemnify or hold harmless the City. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without Green Hill's consent, but should it do so, the City shall waive the indemnification herein, except the City's decision to settle or abandon a matter following an adverse judgment or failure to appeal, shall not cause a waiver of indemnification rights herein, providing, however, that the adverse judgment or failure to appeal is not due to the City's failure to promptly notify Applicant or to cooperate fully in the defense. The foregoing includes, but is not limited to, any and all claim(s), causes of action or lawsuit(s) brought by the Claimants, by their homeowners' association or by anyone else on their behalf.
- d. Limitation of Indemnity. Notwithstanding the generality of the above, for purposes of the current claims by the Vista Verde homeowners concerning the Mausoleum, the City shall bear its own legal defense costs, but this restriction shall not apply to future matters.
- e. Hold Harmless: Construction and Other Activities. Green Hills hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Green Hills or Green Hills' agents, contractors, subcontractors, agents, or employees' operations under the CUP, whether such operations be by Green Hills or by any of Green Hills' agents, contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for Green Hills or any of Green Hills' agents, contractors or subcontractors. Nothing herein is intended to make Green Hills liable for intentional wrongful and/or reckless acts of City's officers, employees, agents, contractors or subcontractors.
- f. Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement shall survive termination of this Agreement or CUP for any reason other than City's default.